

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**BRANDON BONEY AND CRYSTAL
JONES-BONEY, INDIVIDUALLY
AND AS NEXT FRIEND OF BLAZE
BONEY,
Plaintiffs,**

vs.

**LOWE’S HOME CENTERS, LLC
Defendant.**

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CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Defendant Lowe’s Home Centers, LLC, (“Defendant” or “LHC”), pursuant to 28 U.S.C. §§ 1441 and 1446, gives notice that it hereby removes the case styled *Brandon Boney and Crystal Jones-Boney, Individually and as Next Friend of Blaze Boney*, filed in the 101st Judicial District Court, Dallas County, Texas, to the United States District Court for the Northern District of Texas, Dallas Division. As grounds for removal, LHC respectfully shows the Court as follows:

A. STATE COURT ACTION

1. The State Court Action was initiated by Plaintiff Blaze Boney (a minor) filing *Plaintiff’s Original Petition* (“Original Petition”) on May 9, 2018, in the 101st Judicial District Court, Dallas County, Texas Cause No. DC-18-06098 (the “State Court Action”). In that action, Plaintiff asserted a claim of negligence against LHC and sought to recover unspecified damages allegedly sustained as a result of the alleged conduct of LHC.

2. Plaintiff first served the State Court Action on LHC on July 12, 2018.

3. Defendant filed its Original Answer on July 26, 2018.

4. On September 10, 2018, Plaintiffs Brandon Boney and Crystal Jones-Boney, as Next Friend of Blaze Boney (“Plaintiffs”) filed *Plaintiff’s Amended Petition*, which, like the

Original Petition, asserted a claim of negligence against LHC and sought to recover unspecified damages allegedly sustained as a result of the alleged conduct of LHC.

5. On May 17, 2019, Plaintiffs filed *Plaintiffs' Second Amended Petition, Request for a Jury Trial, and Request for Disclosure*, which **added a new claim of gross negligence** along with the original claim of negligence against LHC and, **for the first time**, alleged damages in an amount “more than \$100,000.00, but less than \$200,000.00.”

6. Pursuant to Texas Rule of Civil Procedure 92, Defendant generally denies each and every allegation contained in Plaintiffs' Second Amended Petition and demands strict proof of Plaintiffs' allegations against Defendant by a preponderance of the evidence.

B. REQUIREMENTS FOR REMOVAL

7. An Index of all documents filed in state court is attached as Exhibit A. The state court documents are attached as Exhibits B – G-1.

8. While the Original Petition and Amended Petitions filed in this action failed to allege amounts in controversy, Plaintiffs' Second Amended Petition filed on May 17, 2019 **for the first time** alleged an amount in controversy in excess of \$75,000.00. Consequently, this Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b). As set for in more detail below, this Court has original jurisdiction of this matter based on diversity jurisdiction pursuant to 28 U.S.C. §1332(a).

9. As required by 28 U.S.C. § 1446(b), LHC, the removing party, will promptly give all parties written notice of the filing of this Notice of Removal and will promptly file a copy of this Notice of Removal with the Clerk of the 101st Judicial District Court in Dallas County, Texas, where the State Court Action is currently pending.

C. THE COURT HAS JURISDICTION

10. The District Court of the United States has original jurisdiction over this civil action because there is complete diversity of citizenship between the parties and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. 28 U.S.C. §1332(a)(1).

11. Plaintiffs are natural persons. Plaintiffs' Second Amended Petition in this case states that "Plaintiffs are individuals residing at 168 Dry Wall Ct, Royse City, Texas 75189" and therefore, on information and belief, Plaintiffs are domiciled in the State of Texas, and are citizens of Texas for the purposes of diversity.¹

12. The sole member of Lowe's Home Centers, LLC is Lowe's Companies, Inc. ("Lowe's Companies"). Lowe's Companies is a corporation that is a citizen of North Carolina because it is incorporated in North Carolina and it maintains its principal place of business in North Carolina. There are no other members of LHC. Therefore, LHC is a citizen of North Carolina because its sole member, Lowe's Companies, is a citizen of North Carolina.

13. In the State Court Action, Plaintiffs' Second Amended Petition in Section VIII paragraph 1 states that Plaintiffs seek monetary relief in an amount more than \$100,000.00, but less than \$200,000.00. Pursuant to 28 U.S.C § 1446(c)(2), the foregoing amount sought by Plaintiffs in their Second Amended Petition is deemed to be the amount in controversy for purposes of this Notice.²

D. PRAYER

WHEREFORE, pursuant to 28 U.S.C. § 1332(a)(1), 1367, 1441, and 1446, LHC prays

¹ Pl.'s Pet., at 1.

² See Neilson v. Williams, No. 11-CV228, 2013 WL 1180960, at *1 (E.D. Tex. Jan. 29, 2013) (stating that for diversity purposes, "[i]t has long been recognized that 'unless the law gives a different rule, the sum claimed by the plaintiff controls if the claim is apparently made in good faith.'" (citing St. Paul Reinsurance Co. v. Greenberg, 134 F.3d 1250, 1253, & n.6 (5th Cir. 1998))).

that the United States District Court for the Northern District of Texas, Dallas Division, accept this Notice of Removal, assume jurisdiction of this cause, and issue such further orders and process as may be necessary to bring before it all parties necessary for the trial hereof.

Date: May 20, 2019

Respectfully submitted,

/s/ Melanie K. Okon

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COUNSEL FOR DEFENDANT

LOWE'S HOME CENTERS, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this the 20th day of May 2019, a true and correct copy of the above and foregoing has been served upon the following counsel, in accordance with the Federal Rules of Civil Procedure.

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**GUARDIAN AD LITEM
APPOINTED BY STATE COURT
ATTORNEY FOR PLAINTIFF**

/s/ Melanie K. Okon
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